

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Sacramento, California

**September 12, 2023, at 1:30 p.m.**

1. [20-00202-E-0](#)  
[RHS-1](#)

**IN THE MATTER OF THOMAS  
OSCAR GILLIS, FEE RUBRIC**

**CONTINUED STATUS CONFERENCE RE:  
O R D E R   S E T T I N G   S T A T U S  
C O N F E R E N C E  
R E R E C O V E R Y   O F   O V E R P A Y M E N T   O F  
L E G A L   F E E S   A N D   E N F O R C E M E N T   O F  
F E E   R U B R I C   O R D E R   A N D   R E L A T E D  
O R D E R S  
6-23-22 [[248](#)]**

Notes:

Continued from 7/19/23. The Clerk of the Court is to file on or before 9/5/23 a written report of the request for distribution forms received, the list of Former Clients to whom distributions have been made, and any uncashed checks or other nonacceptance of payment.

**~~The Status Conference is concluded and removed from the Calendar.~~**

**SEPTEMBER 12, 2023 STATUS CONFERENCE**

Pursuant to the May 24, 2023 Order of this Court (Dekt. 295), the Clerk of the Court transmitted to the Group One Former Clients of Thomas O. Gillis for whom Mr. Gillis has been ordered to disgorge fees he was previously paid: (1) a copy of the May 24, 2023 Order, (2) Notice and Election to Participate Form, and (3) the Request for Payee Information and TIN Certification. These Documents are necessary for the Group One Former Clients to participate in the disbursement of monies held by the Clerk of this Court pursuant to this court's prior Order establishing such fund for the benefit of such Former Clients.

The response period has expired. The Clerk of the Court sent the Notice and related Documents to Group One Former Clients in thirty-nine (39) cases, of which twenty-one (21) were joint cases. The Clerk of the Court reports that thirty (30) Group One Former Clients (which represents eighteen (18) cases) have submitted their Election to Participate in the Distribution forms. For joint cases, requests for disbursements have been received by each of the joint debtors, and the disbursement is made by payment of fifty percent (50%) to each of those joint debtor Former Clients.

The thirty (30) Former Clients and the *pro rata* amount of monies ordered to be disbursed to each the thirty (30) Former Clients are identified in the table below:

**In re: Gillis, MP 20-202. See Document No. 295, Order for the Clerk of the Court to Distribute the Monies**

Case No.		Name	Claim Dckt. No.	Amt. of Fees Ordered Disgorged (50% per Joint Debtor)	Amt. Disbursed (Est.)
18-14403	Joint	Rodolfo Torres	302	\$400.00	\$309.46
18-14403	Joint	Maria Guadalupe De Cazares	303	\$400.00	\$309.46
15-90657	Individual	Gabriel Jimenez	304	\$800.00	\$618.91
19-10721	Individual	Jose Luis Leon	305	\$1,200.00	\$928.37
18-13980	Individual	Joao A. Vaz	306	\$800.00	\$618.91
17-12814	Joint	Dario Mendoza	307	\$400.00	\$309.46
17-12814	Joint	Maria Mendoza	308	\$400.00	\$309.46
18-13595	Individual	Dimas Coelho	309	\$800.00	\$618.91
18-12173	Joint	Vincente Rincon (Alcala)	310	\$400.00	\$309.46
18-12173	Joint	Josefina Rincon (Hernandez)	311	\$400.00	\$309.46
16-14612	Individual	Jose Guadalupe Garcia	312	\$800.00	\$618.91
19-14976	Joint	Francisco Gonzalez (Ramos)	317	\$400.00	\$309.46
19-14976	Joint	Rosalva Ramos	318	\$400.00	\$309.46
19-14954	Joint	Mario Alberto Vasquez	313	\$1,000.00	\$773.64
19-14954	Joint	Maribel Ortiz (maiden name)	314	\$1,000.00	\$773.64
17-13987	Joint	Jose Herrera	315	\$400.00	\$309.46
17-13987	Joint	Melissa Herrera	316	\$400.00	\$309.46
19-14377	Joint	Marie Teresa Mendez	319	\$400.00	\$309.46
19-14377	Joint	Eric Juarez Mendez	320	\$400.00	\$309.46
19-26327	Individual	Stephanie Young Templeton	321	\$1,500.00	\$1,160.46
19-90554	Joint	Filimon David Tamrz	322	\$750.00	\$580.23
19-90554	Joint	Blanche Tamrz	323	\$750.00	\$580.23
15-11649	Joint	Jose Perez	324	\$400.00	\$309.46
15-11649	Joint	Adriana Perez	325	\$400.00	\$309.46
17-13706	Joint	Sonia Canchola	326	\$400.00	\$309.46
17-13706	Joint	Miguel Gutierrez	327	\$400.00	\$309.46
17-13150	Joint	Guadalupe Serrato	328	\$550.00	\$425.50
17-13150	Joint	Gerardo Corona	329	\$550.00	\$425.50
19-24464	Joint	Ernesto Copado Melendres	332	\$675.00	\$522.21
19-24464	Joint	Linda Avitia	333	\$675.00	\$522.21

<b>Amount Deposited with the Clerk of the Court, Plus Interest as of 08/31/2023</b>	<b>\$14,118.93</b>	<b>Total Disgorgement Ordered</b>	<b>\$18,250.00</b>
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<b>Total Monies Distributed Pro Rata to Group One Former Clients</b>	<b>\$14,118.93</b>
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The Clerk reports that a total of \$14,118.93 of monies has been deposited with the Clerk, including any interest accruing thereon, as of August 31, 2023. No further monies are projected to be received pursuant to the prior Order of this court. The total amount ordered disgorged for those thirty

Former Clients is \$18,250.00. This results in the projected distribution of seventy-seven and sixty-three tenths percentage (77.63%) for each of the thirty Group One Former Clients, based on the interest accruing through August 31, 2023.

At the Status Conference, **XXXXXXX**

2. **18-25114-E-13**      **DAVID HOWERTON**      **CONTINUED MOTION TO DISMISS**  
**DPC-3**      **Peter Macaluso**      **CASE**  
           **5-8-23 [115]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 8, 2023. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <b>XXXXXXXXXXXXXXXXXX</b></b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, David Howerton (“Debtor”), is in default with respect to the plan.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on June 7, 2023. Dckt. 119. Debtor states a new plan will be filed.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,929.46 delinquent in plan payments, which represents multiple months of the \$2,040.86 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a new Plan is not evidence that resolves this Motion.

The Trustee reports that the delinquency has increased. Debtor's counsel reports that the Debtor has passed away and his representative want to complete the Plan.

The Debtor Representative will make an immediate \$4,000 payment and are in the process of doing a refinance to pay off the Plan.

The parties agreed to a continuance.

### **July 19, 2023 Hearing**

At the hearing, counsel for the Debtor's Successor Representative reported how they will now proceed with the refinance or liquidation of the property. The Chapter 13 Trustee concurred with the request for a continuance of the hearing on this Motion.

### **September 12, 2023 Hearing**

At this hearing, **xxxxxx**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **xxxxxxxxxxx**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order Setting the Hearing on the Motion to Impose the Automatic Stay was served by the Clerk of the Court on Debtor [(*pro se*), Creditors, and Chapter 13 Trustee as stated on the Certificate of Service on August 29 and 30, 2023. The court computes that 14 and 13 days' notice has been provided.

**The Motion to Impose the Automatic 362(a) Stay is xxxx.**

On August 22, 2023, Debtors Georgene Hicks and Ricardo Esparza, Jr. delivered to the court a letter requesting "an automatic 30 day bankruptcy stay." The letter describes some family matters the Debtors have been addressing and difficulty using the online filing program. Additionally, it states that Debtors are seeking to engage counsel to represent them in this Bankruptcy Case.

Debtors have filed two prior cases which were pending and then dismissed within one year of the August 22, 2023 filing of the current Bankruptcy case. The two prior cases and their dismissal dates are: 23-21587, dismissed on June 14, 2023, and 22-22894, dismissed on November 21, 2022.

Congress has provided that in the event of there having been two or more bankruptcy cases of an individual debtor that were pending and dismissed within one year of the subsequently filed bankruptcy case, then no automatic stay goes into effect into the subsequently filed bankruptcy case. 11 U.S.C. § 362(c)(4)(A). The statute further provides in 11 U.S.C. § 362(c)(4)(B) and (C) that the Bankruptcy Court may impose the stay provided for in 11 U.S.C. § 362(a), stating:

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; . . . .

With respect to the obligation on the debtor or other party in interest seeking imposition of the § 362(a) stay to show that the filing of the subsequent case is in good faith, 11 U.S.C. § 362(c)(4)(D) (emphasis added) provide for a presumption of the filing not being in good faith as follows:

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

**(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;**

**(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title** or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

**(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or**

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

Looking at the Debtors' two prior cases that were pending and dismissed within the prior two years: (1) case 23-21587 was dismissed due to Debtors' failure to file the Schedules, Statement of Financial Affairs, and a Chapter 13 Plan; and (2) case 22-22894 was dismissed due to Debtor's failure to file Schedules, Statement of Financial Affairs, and a Chapter 13 Plan.

The presumption of the subsequent case not being filed in good faith must be overcome by evidence demonstrating good faith filed by Debtors.

The court construes Debtor's Letter to be a Motion for the Imposition of the Automatic Stay as provided in 11 U.S.C. § 362(c)(4)(B). Such Motion must be set for noticed hearing, however, the court can consider imposing the automatic stay on an *ex parte* basis pending a hearing on the Motion. In

reviewing the Motion, there is no evidence submitted in support of the Motion and it does not clearly state the grounds upon which the requested relief is proper.

### September 12, 2023 Hearing

The court's review of the Docket discloses that no supplemental pleadings were filed by Debtors by the September 6, 2023 deadline set by the court in the Interim Order imposing the Stay and setting the September 12, 2023 Hearing. Order; Dckt. 15. At the hearing, **XXXXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Impose the Automatic Stay filed by Georgene Hicks and Ricardo Esparza, Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **xxxx**.

4. <a href="#">22-21656-E-13</a> <a href="#">DPC-2</a>	<b>ERROL QUOCK AND IRENE WONG</b> Michael Mahon	<b>CONTINUED MOTION TO DISMISS CASE</b> 1-18-23 <a href="#">[59]</a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 18, 2023. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <b>XXXXXXXXXXXX</b></b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Errol Quock and Irene Chi-Wia Wong (“Debtor”), has no Plan Pending.
2. Trustee recommends dismissal based on the \$320,131.00 of non-exempt equity.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 8, 2023. Dckt. 65. Debtor states a Modified Plan will be filed and requests the Motion to Dismiss be continued six weeks out.

## **DISCUSSION**

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on September 29, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a new plan is not evidence that resolves this Motion.

The Plan was filed on February 22, 2023, and the Motion to Confirm will be filed by the February 27, 2023. The Trustee concurred with Debtor’s request for a continuance.

### **Trustee’s Status Report**

Trustee filed a status report on May 2, 2023. Dckt. 73. Trustee indicates an Amended Plan has been filed, however, no motion to confirm has been filed nor has the Plan been served.

## **FILING OF AMENDED PLAN NO MOTION TO CONFIRM**

Debtor filed another Amended Plan on April 10, 2023. Dckt. 72. However, Debtor has not filed a Motion to Confirm the Amended Plan nor has Debtor served the Plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, Debtor’s counsel explained some of the impediments to moving forward with a plan, but stated that those issues have been addressed and that Debtor and counsel will diligently move forward.

The Trustee concurred with the request for a continuance so Debtor can move forward in diligently prosecuting this case.



## July 19, 2023 Hearing

On May 14, 2023, the court granted Debtor's Motion for Authorization to sell the Mercer Way Property. Order, Dckt. 88. All net proceeds of the sale, after payment of the costs and expenses of the sale, and claims secured by the Property are ordered to be paid to the Chapter 13 Trustee.

At the hearing, counsel for the Trustee agreed to a continuance in light of the sale of the Property.

## FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on August 15, 2023. Dckt. 82, 84. The court has reviewed the Motion to Confirm the Modified Plan filed by Debtor. Debtor has not filed a Declaration or other evidence supporting the feasibility of the Modified Plan. Additionally, Trustee notes the following problems with the proposed Modified Plan:

1. Debtor is delinquent in the current plan, and Debtor may not be able to or is unwilling to make the Plan payments based on the current delinquency.
2. Debtor provided 28 days notice, whereas 35 days notice is required under Local Bankruptcy Rule 3015-1-(d)(1).
3. The interest rate has not been properly fixed and cannot be otherwise ascertained.
4. The Modified Plan does not require sales, and without sales, the plan appears to be underfunded by \$198.69 per month.

Opposition to Motion to Confirm; Dckt. 86.

## September 12, 2023 Hearing

At the hearing, xxxxxxxxxxxx

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is xxxxxxxxxxxx



# FINAL RULINGS

5. [23-22540-E-13](#)  
[JJF-1](#)

SATINDER SINGH  
Ryan Wood

MOTION FOR RELIEF FROM  
CO-DEBTOR STAY  
8-15-23 [\[17\]](#)

PLACERVILLE INVESTMENT GROUP  
LLC VS.

**Final Ruling:** No appearance at the September 12, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney and Chapter 7 Trustee on August 15, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion for Relief from the Automatic Stay is granted, the court determining that there is no codebtor stay that applies in enforcing Sonia Madaan’s sole obligation that is not property of the Bankruptcy Estate.**

## DISCUSSION

Placerville Investment Group LLC (“Movant”) has petitioned the court for relief from the Chapter 13 co-debtor stay as it applies to Sonia Madaan (“Madaan”). Dckt. 17. The grounds stated in the Motion as summarized by the court (unless stated in “quotation marks”) is as follows:

- A. Movant is the payee on three promissory notes, for two Madaan is the guarantor, and for the third note (the (\$85,000 Note”) Madaan is the sole obligor. Motion, ¶ 1; Dckt. 17.
- B. The \$85,000 loan was made to Madaan and the Debtor is not an obligor on the Note.

- C. Movant commenced an action against both Debtor and Madaan on the three notes, and has obtained judgment against Madaan individually for \$89,170.81 for her obligation on the \$85,000 Note, and jointly and severally against Madaan and the Debtor in the amount of \$293,888.48 for the other two notes. *Id.*, ¶ 4.
- D. Movant seeks relief from the co-debtor stay to enforce the judgment against Madaan only as to the judgment for \$89,170.81 which has been entered against Madaan individually.

A copy of the State Court Judgment, California Superior Court for the County of Yuba County Superior Court, case number CVCV23-00220, is provided as Exhibit A. Dckt. 21. The State Court Judgment so provides for the judgment of \$89,170.81 against only Madaan.

### **Co-Debtor Stay of 11 U.S.C. § 1301(a)**

Congress provides in 11 U.S.C. § 1301(a) for a co-debtor stay in Chapter 13 cases that protects non-debtors as follows:

#### § 1301. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to **collect all or any part of a consumer debt of the debtor** from any **individual that is liable on such debt with the debtor**, or that secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

11 U.S.C. § 1302(a) (emphasis added). As highlighted above, two key elements for the co-debtor stay to come into effect is that: (1) the person must be liable along with the debtor on the obligation, and (2) it must be a consumer debt.

Here, the debt is that portion of the State Court Judgment which is entered only against Madaan.

On Schedule D, Debtor lists a secured claim for Movant in the amount of \$245,000.00 based on a judgment. Dckt. 29. No other claim is listed for Movant on Schedule D or E/F. *Id.*

Movant demonstrates exercising a variant of the adage “Discretion is the better part of valor” when dealing with the automatic stay. Given the application of 11 U.S.C. § 362(a) rendering acts in violation of the stay void and sanctions for violation of the stay being swiftly applied when a creditor is

aware of the bankruptcy and gambles on a assertion that the creditor did not “think” the stay applied, seeking relief or confirmation there is not a stay is appropriate.

The court confirms for Movant that the co-debtor stay arising under 11 U.S.C. § 1301(a) does not apply to the State Court Judgment in the amount of \$89,170.81 entered against Madaan individually.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the Motion is granted and the court confirms that the co-debtor stay provisions of 11 U.S.C. § 1301(a) do not apply to the State Court Judgment entered in the amount of \$89,170.81, plus costs, fees, and other amounts awarded relating thereto, entered individually against Sonia Madaan in *Placerville Investment Group, LLC v. Stainer Singh, Sonia Madaan, et al*, by the California Superior Court for the County of Yuba, and the enforcement of said individual judgment against Sonia Madaan.

The determination of that the co-debtor stay does not apply to the judgment of \$89,170.81 does not alter or limit the application of the automatic stay as it applies to Debtor Satinder Singh, property of the Bankruptcy Estate, or property of the Debtor, or that the co-debtor stay provisions of 11 U.S.C. § 1301(a) do not apply to a debtor for which both Sonia Madaan and Satinder Singh, the Debtor, are both liable.

No other or additional relief is granted.

6. <a href="#">23-22265-E-13</a> <a href="#">SKI-1</a>	<b>BETHANY JOHNSON</b> <b>Peter Macaluso</b>	<b>MOTION FOR RELIEF FROM AUTOMATIC STAY</b> <b>7-28-23 [22]</b>
<b>EXETER FINANCE LLC VS.</b>		

**Final Ruling:** No appearance at the September 12, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of

the United States Trustee on July 28, 2023. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Exeter Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Chrysler 300, VIN ending in 6999 ("Vehicle"). The moving party has provided the Declaration of Nancy Wafer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Bethany Elaine Johnson ("Debtor").

Movant argues Debtor did not provide for the Vehicle in their Chapter 13 plan, and the Movant is in possession of the Vehicle pending relief from stay. Declaration, Dckt. 27. Movant also provides evidence that there are 25 pre-petition payments in default, with a pre-petition arrearage of \$10,192. *Id.*

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$16,781.87 (Declaration, Dckt. 27), while the value of the Vehicle is determined to be \$7,000, as stated in the Statement of Financial Affairs. Dckt. 36.

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the

bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

**Federal Rule of Bankruptcy Procedure 4001(a)(3)  
Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Exeter Finance LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Chrysler 300, VIN ending in 6999 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

**FINANCIAL SERVICES VEHICLE  
TRUST VS.**

**Final Ruling:** No appearance at the September 12, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 27, 2023. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Financial Services Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 BMW 3 Series 330i Sedan 4D, VIN ending in 0473 ("Vehicle"). The moving party has provided the Declaration of Christopher Dick to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Williams ("Debtor").

Movant argues Debtor has not made 2 post-petition payments, with a total of \$1,100.94 in post-petition payments past due. Declaration, Dckt. 27. Movant also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$1,100.94. *Id.*

**Option 1: Kelley Blue Book Valuation Report Provided**

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).



## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$31,052.44, while the value of the Vehicle is determined to be \$31,082.00. Declaration, Dckt. 27.

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

### **Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for the reason that the value of the collateral continues to decline, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Financial Services Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 BMW 3 Series 330i Sedan 4D, VIN ending in 0473 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.